

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA * CASE NO. 5:19CR274

Plaintiff *

-VS- * JUDGE BENITA PEARSON

ROBERT CLARK, JR. *

Defendant * DEFENDANT'S SENTENCING
* * * MEMORANDUM

Now comes the Defendant, Robert Clark, Jr., by and through counsel, and hereby offers the following Memorandum for the Court's consideration at his sentencing hearing.

Respectfully submitted,

/S/ LAWRENCE J. WHITNEY
LAWRENCE J. WHITNEY #0023738
Attorney for Defendant
137 South Main St., Suite 201
Akron, Ohio 44308
330-253-7171
330-253-7174 fax
Burdon-merlitti@neo.rr.com

BRIEF

PLEA AGREEMENT GUIDELINE CALCULATION

The parties entered into a Plea Agreement filed with the Court on August 14, 2019 (R. #68, PageID #298). The parties stipulated to the following guideline calculation:

Count One

Base Offense Level:	12	2K2.1 (a)(7)
Number of Firearms	<u>+ 4</u>	2K2.1 (b)(1)(B)
Subtotal:	16	

Count Two

Base Offense Level:	12	2K2.1 (a)(7)
Conspiracy	<u>- 3</u>	2K2.1 (b)(2)
Subtotal:	9	

Multiple Counts Adjustment

	16	
3D 1.4 (a) + (b)	<u>+ 1</u>	
	17	(before acceptance)

With acceptance, 3E1.1 (a) + (b), the guideline calculation is therefore 14.

PRESENTENCE GUIDELINE CALCULATION

The Presentence filed under seal on October 21, 2019 (R. #84), is very similar to the Plea Agreement calculation **EXCEPT** the probation department groups Counts 1 and 2, pursuant to 3D1.2(d), and thus, there is no multiple count calculation and Defendant does not receive that extra point – making his TOL 13, not 14 as in the Plea Agreement. The probation officer supports this decrease via App. Note 6 (R. #84, PSI, PageID #402). Note 6 specifically indicates that a conspiracy (which count 2 is) if covered under section (d) of the offense that is the object of the conspiracy is covered under subsection (d). Thus, section (d) of 3D1.2 indicates that the offenses are closely related and are not multiple counts .

Defendant would ask that the Court adopt the recommendation of the PSI and set his TOL at 13.

Defendant agrees that he is a Criminal History Category 1.

18 U.S.C. 3853 FACTORS

Defendant acknowledges the seriousness of the offense and the danger that these firearms bring to the community. Defendant also concedes that there is some need to afford adequate

deterrence to this kind of criminal conduct. However, Defendant asks that this Court also consider that at the time of the offense, he was 18 years old. Further, he asks that the Court consider his personal and family history as set forth in the PSI (R. #84, PageID #404). Attached are letters from the Defendant's grandfather and aunt, who remain supportive of him. Defendant will further discuss these characteristics at his sentencing hearing.

SUBSTANCE ABUSE

Defendant has an abuse problem (R. #84, PageID #405). He has never received treatment. Defendant would seem to benefit from substance abuse treatment.

PRISON RECOMMENDATION

Defendant asks that the Court recommend that he be sentenced to a prison close to Canton, Ohio.

/S/ LAWRENCE J. WHITNEY

LAWRENCE J. WHITNEY

Attorney for Defendant

PROOF OF SERVICE

I hereby certify that on November 21, 2019, a copy of the foregoing Defendant's Sentencing Memorandum was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/S/ LAWRENCE J. WHITNEY

LAWRENCE J. WHITNEY

Attorney for Defendant